*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.25844 of 2006

% 05-1-2007

Syed Munavvaruddin Quadri

...Petitioner

AND

$ The Chief Executive Officer, A.P.State Wakf Board, Hyderabad and others

...Respondents

! COUNSEL FOR PETITIONER: Mr.M.N.Narasimha Reddy

^ COUNSEL FOR RESPONDENTS: Mr.S.M.Subhani, Standing Counsel for A.P.Wakf Board

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>HEAD NOTE:

? CASES REFERRED:

1. AIR 1981 Karnataka154
2. (1999) 8 SCC 16

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25844 of 2006

1.2007

Between:

Syed Munavvaruddin Quadri, S/o.Syed Sharfuddin Quadri

… Petitioner

AND

The Chief Executive Officer, A.P. State Wakf Board And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25844 of 2006

ORDER:

The petitioner is "person interested" in the affairs of Jamia Mosque, Mulugu in Warangal District. He is statedly Ex-President of the Managing Committee till 22.9.2006. An election was held in 2001 for electing Managing Committee by all the Mussallies (Namazees, who perform prayers in the Mosque). After expiry of the term of the Managing Committee, the first respondent by proceedings dated 22.9.2006 appointed another committee by nomination. Objections were raised. The Joint Collector, Warangal, ordered enquiry by the fourth respondent. After conducting enquiry, fourth respondent submitted a report recommending election by ballot on 14.10.2006. After receiving the report of the Joint Collector, the first respondent commenced election process through the third respondent and fixed 17.12.2006 as the date for election of members or Managing Committee, duly cancelling the earlier proceedings dated 22.9.2006 nominating the committee. The second respondent prepared the voters list and issued a notificationon 30.11.2006 calling for contesting panels. The same was published on the Notice Board of Jamia Mosque. As per the notification, the petitioner submitted a list of panel members on 02.12.2006. When the election was due on 17.12.2007, the first respondent issued proceedings dated 06.12.2006 postponing the election till further date is announced. The petitioner alleges that the elections were postponed by the first respondent at the behest of the local M.L.A., for extraneous considerations and therefore the impugned proceedings are unsustainable. The petitioner, therefore, filed the present writ petition seeking a writ of Mandamus directing the respondents to proceed with the elections as per schedule on 17.12.2006 pursuant to the notification dated 30.11.2006 issued by the second respondent and set aside the impugned proceedings of the first respondent dated 06.12.2006.

At the stage of admission itself, learned Standing Counsel for A.P. Wakf Board took notice and filed a counter affidavit. Therefore the matter was heard on 19.12.2006.

In the counter affidavit filed by the Chief Executive Officer of A.P. Wakf Board, the averments in the petitioner's affidavit regarding submission of the report by the fourth respondent recommending election and decision taken by the first respondent to conduct election are not denied. It is however stated that the Revenue Divisional Officer (RDO) submitted another report on 02.12.2006 to the effect that the allegations made by the petitioner herein against the members of the nominated Managing Committee headed by Mr.M.A.Hafeez are baseless, and that in view of such divergent reports by the fourth

respondent it was thought desirable to postpone the election. The other allegations made by the petitioner are denied.

Though the dispute is regarding postponing of election to the Managing Committee of Jamia Mosque, Muluru, this Court entertained a doubt as to whether the election by Mussallies to elect the members of the Managing Committee is contemplated under the Wakf Act, 1995 (the Act, for brevity). Learned Counsel for the petitioner and learned Standing Counsel for Wakf Board made submissions on this question. Learned Counsel for the petitioner submits that Section 18 of the Act permits the Wakf Board to order election of Managing Committee. He placed reliance on the decision of Karnataka High Court in **Masjid-E-Islammabad v Karnataka Board of Wakf**[1]. He nextly submits that when once election notification is issued under General Election Law, elections cannot be postponed under any circumstances and a party aggrieved by such election has to seek redressal before the Civil Court or before a Tribunal constituted under the Act. **Per contra**, learned Standing Counsel submits that there is no provision in the Act or A.P. Wakf Rules, 2000 (AP Rules, for brevity) to conduct election of Managing Committee by the Mussallies though such procedure was in vogue when Wakf Act, 1954 (1954 Act) was the regulating law. He also submits that 1954 Act has been repealed and the byelaws made thereunder have not been saved by Section 112 of the Wakf Act, 1995. On merits, he submits that when there were two reports by the same Officer of the Revenue Department, it is reasonable to stop election when a Managing Committee is already appointed by nomination.

The core question that requires to be considered is whether the Wakf Act, 1995 or A.P. Wakf Rules, 2000, contemplate election of a Managing Committee by the Mussallies of a Mosque or of a Wakf. As rightly submitted by the learned Standing Counsel there is no express provision in the Act providing for election of Managing Committee. In exercise of their powers under Section 109(1) of the Act, State of Andhra Pradesh has promulgated AP Rules. Even these Rules do not expressly permit or empower any authority to conduct election of Managing Committee by Mussallies. It is to be seen whether there is any substance in the contention of the learned Counsel for the petitioner that by implication, such method of election of Committee is contemplated under the provisions of the Act and A.P. Rules.

The Wakf Act, 1995 provides for better administration of wakfs and matters connected therewith. Section 3(c) defines 'Board' means a Board of Wakf established under sub-section (1), or under sub-section (2) of Section 13. The Wakf Board shall be a body corporate having perpetual succession and common seal with power to acquire and hold the property and to transfer any such property subject to such

conditions and Registrars as may be prescribed. Section 14 deals with composition of the Board of Wakf. As per this, Board shall *inter alia* consists of one and nor more than two members to be elected from each of the electoral colleges consisting of Muslim Members of Parliament from the State, Muslim Members of the State Legislature, Muslim Members of Legislative Council of the State and Mutawallis of institution having an annual income of over Rs.1,00,000/-. Section 109 of the Act empowers the State Government to make Rules to carry out the purpose of the Act other than those of Chapter III. Subsection (2) of Section 109, enumerates the matters in respect of which the State Government can make Rules *inter alia* the manner of election of members of the Board under subsection (2) of Section 14. In exercise of such powers, the State Government has promulgated A.P. State Wakf Board Conduct of Election Rules, 1996 (the Election Rules, for brevity) vide G.O.Ms.No.68, dated 27.5.1996.

The Board constituted has to discharge powers and functions under Section 32(1) and 32(2) of the Act. As per subsection(1) of Section 32, general superintendence of all the Wakfs in the State shall vest in the Board and it shall be the duty of the Board to exercise its powers to ensure that the Wakfs under its superintendence are property maintained, controlled and administered. Subsection (2) of Section 32, enumerates powers and functions. This *inter alia* include the power to appoint and remove Mutawallis in accordance with the provisions of the Act, to administer the Wakf fund and to investigate into wakf matters.

Section 3 (i) defines 'mutawalli' means any person appointed either verbally or under a document by which Wakf has been created, or by a competent authority, to be the mutawalli of the Wakf. A person holding the office of mutawalli by virtue of a custom or a person appointed by a mutawalli to perform the duties as such and any person, committee or corporation for the time being managing or administering any Wakf or Wakf property is also defined as 'mutawalli'. Sections 63, 64 and 66 of the Act essentially deal with the appointment and removal of mutawalli. In the absence of any person to be appointed as mutawalli under the terms of the deed of Wakf or when there is a dispute regarding mutawalliship the Board of Wakf concerned is empowered to appoint any person to act as mutawalli for such period as is deemed fit. Rule 20 of A.P. Rules prescribes the duties of mutawalli. These include carrying out the powers of the Wakf Board, administering Wakf property, keeping Wakf buildings and other properties in good condition, increasing the income of the Wakf etc.

Whenever the conditionalities mentioned in Section 63 of the Act are present, it is not necessary always to appoint a mutawalli. Section 18 of the Act contemplates the appointment of a Committee for

the supervision of the Wakf. The constitution, functions, duties and the term of office of such committee shall be determined by the Wakf Board. Managing Committee appointed under Section 18 of the Act shall be under supervision of the Wakf Board and can be superseded before the expiry of the terms of appointment (Section 67 of the Act). Be that as it is, Rule 10 of AP Rules empowers the Wakf Board to constitute a Committee or Committees, whenever it is necessary with such number of members. Therefore, the provisions empowering the appointment of Managing Committee and conferring powers to supervision of such Committees, nowhere contemplate any election by mussallies.

Though it is submitted that elections were conducted when 1954 Act was in force, learned Counsel for the petitioner did not file any byelaws or circulars to that effect. The decision of Karnataka High Court in **Masjid-E-Islammabad** (supra) does not deal with the question that has fallen for consideration in the present case. Furthermore Section 112 of the Act repealed the Wakf Act, 1954. Nonetheless the repeal shall not effect previous operation of corresponding law and subject thereto anything contain or any action taken in exercise of the powers under corresponding law shall be deemed to have been done under the repealing Act. The byelaws if any made by the Wakf Board under 1954 Act are not saved.

In the context, it is also necessary to examine the question whether it is competent for the Wakf Board to lay down byelaws or regulations for conducting election of Managing Committee. Section 109 of the Act is Rule making power of the State Government. Section 109(2) *inter alia* empowers the State Government to make Rules providing for the manner of election of members of the Wakf Board by means of a single transferable Board under Section 14(2) of the Act. As noticed supra in exercise of such power the State has enacted the Election Rules. Section 109 of the Act does not contain any provision empowering the State Government to make Rules for election of members of Managing Committee for being appointed under Section 18 of the Act read with Rule 10 of A.P. Rules. Even insofar as regulation making power is concerned, it is no difference. Section 110 of the Act empowers the Wakf Board to make Regulations with the previous sanction of the State Government. Such Regulations however cannot be inconsistent with the provisions of the Act or the Rules made thereunder. Subsection (2) of Section 110 of the Act enumerates as many as twelve matters in respect of which the Wakf Board may make Regulations. The “conduct of election of members of Managing Committee” is very conspicuous by its absence in Section 110(2) of the Act. This would also lend support that the Parliament did not contemplate the election of a Managing Committee of a Wakf.

Learned Standing Counsel for Wakf Board does not dispute the legal position. Therefore, the decision of the first respondent to order election of Managing Committee of Jamia Mosque was itself without any authority or power. If this writ petition is allowed, it would amount to resurrecting an illegality. Writ of Mandamus cannot be issued to validate an illegal thing (see **Maharaja Chintamani Saran Math Shahdeo v State of Bihar**[2]).

The writ petition is therefore misconceived and is accordingly dismissed. No costs.

(**V.V.S.RAO, J**)

January , 2007.

NOTE

L.R.Copy be marked.

(By order)

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[1] AIR 1981 Karnataka 154

[2] (1999) 8 SCC 16